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CRIMINAL DIVISION

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977

NO. 77-617 6817

MAURICE McELWEE,
Petitioner.
v.

STATE OF TEXAS

FIRST SUPPLEMENTAL PETITION FOR A WRIT OF
CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF THE STATE OF TEXAS

Steven M. Mason

Wilson McVicker, Jr.

McVICKER, EVANS & MASON
113 N. Second Street
P. O. Drawer 1747
Lufkin, Texas 75901
(713) 634-8806

Counsel for Petitioner

June 27, 1978

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1977

NO. 77-6817

MAURICE McELWEE,
Petitioner.

V.

STATE OF TEXAS

FIRST SUPPLEMENTAL PETITION FOR A WRIT OF
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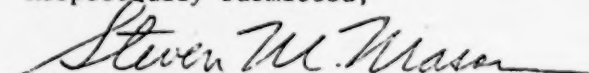
The petition for writ of certiorari on behalf of Maurice McElwee was filed in this court on May 28, 1978. The petition concerns major questions involving the Double Jeopardy guarantees of the 5th and 14th Amendments. The case of Crist, et al v. Bretz, et al, No. 76-1200, then pending and undecided in this Court, was quoted in our petition as being directly on point to the issues raised in the present case. (See Petition, p. 5). This Court has now decided this case on June 14, 1978, and the holdings of this Court are wholly applicable to and in favor of Petitioner's contentions in the present case. This court held (opinion p. 10,11) that the

federal rule that jeopardy attaches when the jury is empaneled and sworn is an integral part of the constitutional guarantee against double jeopardy. Thus, in the present case (see opinion of Court of Criminal Appeals, p. 11 of Petition), when the trial court dismissed the initial prosecution, after the jury had been selected and sworn, for the sole reason to allow the prosecutor to reindict Petitioner and allege prior convictions for enhanced punishment, jeopardy attached so as to forever bar retrial of Petitioner.

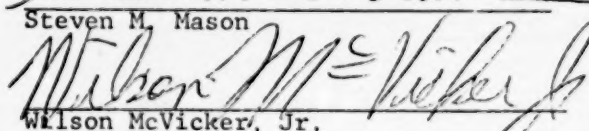
Therefore, due to these uncontroverted facts which fall squarely within the ruling in the Crist case, the present case is one which should now be summarily reversed by this court.

WHEREFORE, Petitioner now prays that this court grant certiorari and summarily reverse the judgment of the Texas Court of Criminal Appeals.

Respectfully submitted,



Steven M. Mason



Wilson McVicker, Jr.

McVICKER, EVANS & MASON
113 N. Second Street
P. O. Drawer 1747
Lufkin, Texas 75901
(713) 634-8806

Counsel for Petitioner

PROOF OF SERVICE

THE STATE OF TEXAS, X

COUNTY OF ANGELINA. X

I, Steven M. Mason, as attorney for Maurice McElwee, Petitioner, delivered in person a true copy of the foregoing Supplemental Petition for Writ of Certiorari to the office of Gerald Goodwin, District Attorney for Angelina County, State of Texas as attorney of record representing

the State, on this the 27th day of June, 1978.

Steven M. Mason
Steven M. Mason

SUBSCRIBED and SWORN to before me, the undersigned authority,
by the said Steven M. Mason, on this the 27th day of June, 1978.



Karen Lee
Karen Lee
Notary Public in and for Angelina County,
Texas. My commission expires Dec. 8, 1979

